



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited
with the United States Postal Service with sufficient
postage as first class mail in an envelope addressed to:
Mail Stop Appeal Brief-Patents, Commissioner for
Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on
November 13, 2006

(Date of Deposit)

James D. Wood

Name of person mailing Document or Fee



Signature

November 13, 2006

Date of Signature

Re:	Application of:	Robert L. Snyder
	Serial No.	10/033,121
	Filed:	October 23, 2001
	For:	Self-Checkout System Having Component Video Camera for Produce Purchase Monitoring
	Group Art Unit:	3627
	Examiner:	Andrew J. Rudy
	MMB Docket No.	1001-0729
	NCR Docket No.	9437

TRANSMITTAL LETTER

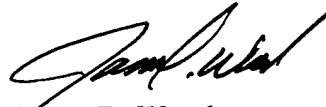
Please find for filing in connection with the above patent application the following documents.

1. Reply Brief (5 pages); and
2. One (1) return post card.

Applicant believes no fee is required for filing of this Reply. However, please charge any fee deficiency or credit any overpayment to Deposit Account No. 13-0014.

Respectfully Submitted,

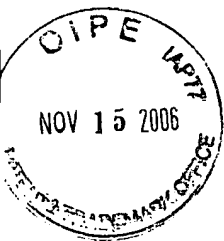
MAGINOT, MOORE & BECK LLP



James D. Wood
Registration No. 43,285

November 13, 2006

Maginot, Moore & Beck LLP
Chase Tower
111 Monument Circle, Suite 3250
Indianapolis, IN 46204-5109
(317) 638-2922 telephone
(317) 638-2139 facsimile
Enclosures



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

NCR Docket No. **9437**

MMB Docket No. **1001-0729**

Application of: **Robert L. SNYDER**

Group Art Unit: **3627**

Serial No. **10/033,121**

Examiner: **Andrew J. Rudy**

Filed: **October 23, 2001**

For: **SELF-CHECKOUT SYSTEM HAVING COMPONENT VIDEO
CAMERA FOR PRODUCE PURCHASE MONITORING**

I hereby certify that this correspondence is being
deposited with the United States Postal Service with
sufficient postage as first class mail in an envelope
addressed to: Mail Stop Appeal Brief - Patents,
Commissioner for Patents, P.O. Box 1450, Alexandria, VA
22313-1450 on November 13, 2006

(Date of Deposit)

James D. Wood

Name of person mailing Document or Fee

Signature of person mailing Document or Fee

November 13, 2006

Date of Signature

REPLY BRIEF

Sir:

This is a reply submitted in response to the Examiner's Answer mailed on
September 13, 2006.

Discussion

The Examiner has attributed to the cited references teachings which are clearly absent from the references. The discussion set forth in the Appellant's Appeal Brief clearly and correctly discuss the relevance of the prior art cited by the Examiner. In the Answer, however, the Examiner appears to have excised language from the Appellant's claims to support rejection of the claims. Ignoring the claim language is improper.

1. Claim 1 Has Been Misconstrued

Previously, the Examiner has relied on the use of the word "comprising" in the claims as a basis for ignoring the actual claim language. The Appeal Brief addresses the error in such an approach. In the Answer, the Examiner now states that "[t]he claim language does not stipulate in any way a specific sequence of events." (Answer at page 4). The Examiner has misconstrued claim 1.

Specifically, the Examiner opines that "the "acquiring" step need not be triggered by the "obtaining" step." (Answer at page 4). In direct contradiction to the Examiner's position, claim 1 states "wherein the step of acquiring a digital picture is triggered by the step of obtaining the weight of the produce item." Thus, the plain language of claim 1 *requires* the "acquiring" step to trigger the "obtaining" step.

The Examiner has provided no indication of why the claim language has been ignored. To the extent the language has been ignored because it is found in a "wherein" clause, the Examiner's actions are contrary to established law. Specifically, the Federal Circuit in *Griffin v. Bertina*, 285 F.3d 1029, 1033, 62 USPQ 2d 1431, 1434 (Fed. Cir. 2002) stated that "the Board did not err in giving limiting effect to the "wherein" clauses

because they relate back to and clarify what is required by the count.” Since the “wherein” clause in claim 1 clarifies the order of the recited steps, the “wherein” clause must be read as providing a limiting effect on the claim.

Therefore, contrary to the Examiner’s construction, claim 1 requires the “acquiring” step to trigger the “obtaining” step.

2. Claim 8 Has Been Misconstrued

Claim 8 recites a processor that is programmed to “acquire a digital picture of the produce item after initiating the program instructions for obtaining the weight of the produce item.” Thus, the plain language of claim 8 *requires* a digital picture to be acquired “after” program instructions for weighing an item have been initiated. The Examiner has provided no explanation for reading the word “after” out of the claim.

Therefore, contrary to the Examiner’s construction, claim 8 requires the “digital picture” to be acquired *after* initiating the program instructions for obtaining the weight of the produce item.

3. Claim 15 Has Been Misconstrued

Claim 15 recites a processor that is programmed to “acquire a digital picture of the produce item based upon the program instructions to obtain the weight of the produce item.” The Examiner has failed to identify any manner in which instructions can be “based upon” the program instructions to obtain the weight of an item without the program instructions to obtain the weight of the item having been, at the least, initiated. Moreover, the words “based upon” require some type of an interconnection between the

acquisition of the picture and the weighing of the item. Thus, the plain meaning of claim 15 *requires* a digital picture to be acquired “based upon” program instructions for weighing an item have been initiated. The Examiner has provided no explanation for reading the words “based upon” out of the claim.

Therefore, contrary to the Examiner’s construction, claim 15 requires the “digital picture” to be acquired *based upon* initiating the program instructions for obtaining the weight of the produce item.

4. Claim 21 Has Been Misconstrued

Finally, claim 21 recites a method that includes “obtaining a picture the produce item via a camera at the self-service checkout terminal in response to the generation of a stable indication of the weight of the produce item.” The Examiner has failed to identify any manner in which taking a picture can be “in response” to generation of a stable indication of the weight of the produce item without first generating the stable indication of the weight of the produce item on a scale as recited in the claim. Thus, the plain meaning of claim 21 *requires* a picture to be acquired “in response to” weighing an item on a scale. The Examiner has provided no explanation for reading the words “in response to” out of the claim.

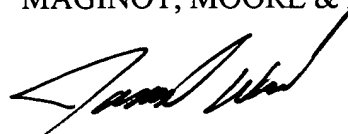
Therefore, contrary to the Examiner’s construction, claim 21 requires the “picture” to be obtained *in response to* generating a stable weight of the produce item on a scale.

5. Conclusion

As discussed above and in the Appeal Brief, claims 1-21 are not obvious in view of a combination of Humble as modified by either Nishi or Nakamura. Accordingly, the Board of Appeals is respectfully requested to reverse the rejections of claims 1-21.

Respectfully submitted,

MAGINOT, MOORE & BECK

A handwritten signature in black ink, appearing to read 'James D. Wood', is written over the firm name.

James D. Wood
Attorney for Appellant
Registration No. 43,285

November 13, 2006
Maginot, Moore & Beck
Chase Tower
111 Monument Circle, Suite 3250
Indianapolis, Indiana 46204-5115
Telephone (317) 638-2922